IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7950 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

PITHVA CHIMANLAL MOHANLAL

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Appearance:

MR HARDIK C RAWAL for Petitioner

MR GM JOSHI for Respondent No. 1

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 19/07/2000

ORAL JUDGEMENT

Rule. Mr. G.M.Joshi learned counsel who waives service of Notice of Rule on behalf of the respondent.

#. Heard the learned counsel for both the sides.

#. The respondent was working as a Blacksmith under the Gujarat State Road Transport Corporation (hereinafter referred to as the Corporation). While in service, the respondent remained absent for a long period without any permission from the authority. Therefore departmental proceedings were initiated against the respondent and in the departmental inquiry, the charges were proved against the respondent. A show cause notice was issued to the respondent on 8.4.1995 and the respondent submitted his reply on 24.4.1995. After considering the reply of the respondent, the Disciplinary Authority took a decision that the respondent cannot be retained in service and accordingly, the Disciplinary Authority by order dated 4.5.1995 dismissed the respondent from service. The respondent thereafter approached the Labour Authority. The Government referred the dispute to the Labour Court, Surendranagar which registered the case as Ref.(LCS) No.124 of 1995. The Labour Court, Surendranagar, after hearing the parties and after taking the evidence came to the conclusion that the penalty awarded to the respondent is disproportionate to the alleged offence committed by the respondent and accordingly the Labour Court set aside the order of dismissal and directed the petitioner Corporation to reinstate the respondent in service with 25 percent back wages. The Labour Court, however imposed penalty of withholding of three yearly increments with cumulative effect .

#. Having felt aggrieved by the judgment and award dated 27.1.2000 passed by the Labour Court, Surendranagar in Ref.(LCS) No.124 of 1995 the petitioner Corporation has filed this SCA for quashing the judgment and award passed by the Labour Court , Surendranagar.

#. Mr. Hardik Raval learned counsel on behalf of the petitioner Corporation submitted that the respondent is in the habit of remaining absent without any permission. He further submitted that earlier also he was penalised for committing said misconduct . In the present case, the respondent was absent for a considerable long period and inspite of intimation, he did not join duties and therefore, departmental proceedings were initiated. Learned counsel on behalf of the petitioner Corporation submitted that if the respondent is not adequately punished for such habitual absence from duty, then it would be difficult to maintain discipline in the office of the Corporation and the work of the Corporation will suffer. Learned counsel on behalf of the petitioner accordingly submitted that the Labour Court has not considered this aspect and took a lenient view in the

matter of penalty imposed by the Disciplinary Authority. Learned counsel on behalf of the petitioner Corporation also submitted that since the respondent remained absent on earlier occasions and was also punished earlier for such misconduct, the offence committed by the respondent should not have been taken lightly by the Labour Court and the Labour Court should not have interfered with the penalty imposed by the respondent Corporation.

#. Mr. G.M.Joshi learned counsel on behalf of the respondent submitted that the respondent remained absent for such a long period for which departmental proceedings were started against him. Learned counsel on behalf of the respondent submitted that the respondent has submitted some medical certificate in support of his absence but that medical certificate has not been taken from the Civil Hospital as required by the Corporation. It is denied by the learned counsel on behalf of the respondent that the respondent was also earlier punished for misconduct of remaining absent without permission.

#. I have considered the submissions of the learned counsel for both the sides. It is not in dispute that the respondent remained absent without permission from the authority and in the past also he was punished for such misconduct. In my view the Labour Court has taken a too lenient view regarding penalty. In view of the facts and circumstances mentioned above, I am of the view that the the respondent who has committed similar misconduct earlier and has been punished, deserves more stringent punishment. Stoppage of three yearly increments and disallowing 75 per cent of back wages may not be sufficient punishment having regard to the offence committed by him in the present case as well as during his past service career. In such circumstances, I am of the view that withholding of atleast five yearly increments with cumulative effect and further reduction of 5 percent back wages will meet the ends of justice. Accordingly the respondent will be entitled to 20 percent back wages instead of 25 percent back wages and 5(five) yearly increment of the respondent be withheld with cumulative effect. With the aforesaid observations and modifications the writ petition is allowed in part. Rule is made absolute to the aforesaid extent. No order as to costs.

(P.K.Sarkar.J)

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